

JOHN R. CAURRUTHERS

IBLA 78-468

Decided November 9, 1978

Appeal from decision of the Arizona State Office, Bureau of Land Management, declaring mining claims abandoned and void. A MC 1173-1185.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Assessment Work–Mining Claims: Abandonment–Mining Claims: Assessment Work

Under 43 CFR 3833.2-1(b), the owner of an unpatented mining claim located after Oct. 21, 1976, but in the calendar year 1976, must file an affidavit of assessment work or a notice of intention to hold the mining claim prior to Dec. 31 of the following calendar year, 1977, or the claim will be conclusively deemed to have been abandoned, under 43 CFR 3833.4(a).

APPEARANCES: Dan R. Morris, Esq., Phoenix, Arizona, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

John R. Caurruthers has appealed from a decision dated May 17, 1978, by the Arizona State Office, Bureau of Land Management (BLM) holding each of the Carr mining claims listed therein to have been abandoned for failure to file an affidavit of assessment work or notice of intention to hold each such claim on or before December 31, 1977, as required by the Federal Land Policy and Management Act of 1976, 43 U.S.C.A. § 1744 (1977 Supp.), and the pertinent regulation, 43 CFR 3833.2-1(b).

The mining claims were located on November 11 and 12, 1976. ^{1/} Copies of the location notices were filed with the State Office on February 7, 1977.

Sections 314(a)(1) and (2) of the Federal Land Policy and Management Act of 1976, supra, and the pertinent regulation, 43 CFR 3833.2-1(b)(1), require that the owner of an unpatented mining claim located after October 21, 1976, shall, prior to December 31 of each year following the calendar year in which the claim was located, file with the State Office evidence of annual assessment work performed during the previous assessment year, or a notice of intention to hold the mining claim. Failure to file the required instruments is deemed conclusively to constitute an abandonment of the mining claim. Section 314 (1)(c), supra; 43 CFR 3833.4(a). Since these claims were located in calendar year 1976, after October 21, one or the other of the documents had to be filed prior to December 31, 1977.

[1] When appellant failed to file either an affidavit or notice of intention, the State Office properly held the claims to have been abandoned and declared them void. Donald H. Little, 37 IBLA 1 (1978); Ronald L. Nordwick, 36 IBLA 238 (1978); Paul S. Coupey, 35 IBLA 112 (1978).

Appellant states in his notice of appeal simply that both he and Olin Industries, an "optionee" of his interests in these mining claims, were unaware of the filing requirements and admits that their failures to meet these requirements resulted from oversight resulting from confusion occasioned by business aspects of the option transaction. This is not an adequate basis to prevent the voiding of these claims as required by 43 CFR 3833.4(a).

Appellant also noted that there are numerous similar mining claims and fractions contiguous to those claims addressed by BLM's decision. Apparently, appellant also neglected to file required documents for these, as he requests in his notice of appeal "that these additional locations be validated and accepted by [BLM] as being in good standing." As the question of the continued validity of these claims has apparently not been considered by BLM, it is not properly before us, and we make no comment on it.

We note in closing that appellant may relocate these claims and file notice of this as provided in 43 CFR 3833.1, subject to any intervening rights of third parties, and assuming no intervening closure of the land to mining location.

^{1/} The following claims were located on November 11, 1976: Carr Nos. 1-4; Carr Fraction No. 1. The following claims were located on November 12, 1976: Carr Nos. 5, 7-11, 16, and 21.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur.

Joan B. Thompson
Administrative Judge

Joseph W. Goss
Administrative Judge

